



INDIANA DEPARTMENT OF TRANSPORTATION

100 North Senate Avenue
Room N730
Indianapolis, Indiana 46204

PHONE: (317) 232-5219
FAX: (317) 233-1481

Eric Holcomb, Governor
Joseph McGuinness, Commissioner

INDIANA STATE ETHICS COMMISSION

APR 04 2017

IC 4-2-6-11

Post-employment waiver

FILED

As the Appointing Authority of the Indiana Department of Transportation, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Mark A. Albers, P.E. in his post-employment with VS Engineering.

I understand that I must file and present this waiver to the State Ethics Commission at their next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of

(Please indicate the specific restriction in 42 IAC 1-5-14 (IC 4-2-6-11) you are waiving):

- IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.
- IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.
- IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.
- IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker.
(Please provide a brief description of the specific particular matter(s) to which this waiver applies below):

B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:

Some of the following information is supported by the employee's personnel file or my knowledge of his current INDOT duties, and the remainder is based solely upon information the employee has provided to me in connection with the process of considering this waiver. The employee's prior job is more particularly described below in this answer.

As Program Funds Manager for INDOT's Crawfordsville District since June, 2016, Mark's position has no substantial decision-making authority over policies, rules, or contracts. Prior to June, 2016, Mark also served as INDOT's Consultant Services Manager and in this role, he supervised the Contract Engineer and certain Project Managers for this District who negotiated and administered professional services contracts.

Mark sought an informal opinion (attached) from the Inspector General's office. This opinion concluded that since (a) Mark supervised INDOT personnel who had engaged in discretionary administration of one or more contracts with VS Engineering (Mark's prospective new employer) and (b) Mark had made certain funding adjustments on or before June, 2016 that affected such contracts, Mark would be subject to the one-year cooling off period.

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

Based solely upon the information provided to me by Mark, and contingent on the approval of this waiver, Mark has accepted the position of Chief Transportation Engineer and as a Project Manager for VS Engineering. Mark indicated that the Chief Transportation Engineer provides technical for civil transportation projects, quality assurance/quality control reviews throughout the plan development process, mentoring of young professionals and client relations. Mark indicated that the Project Manager would serve as team lead to the project development of assigned projects to include oversight of all the services required to deliver the project as required. Mark's new position apparently oversees the man-hours utilized, project budget and administers the client/consultant contract for each assignment, and also prepares letters of interest for proposal requests from state or other public agencies.

3. Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee:

According to Mark, VS Engineering provides professional engineering services to INDOT for transportation infrastructure projects in need of repair, rehabilitation or replacement. As such, Mark will have on-going involvement with INDOT's Capital Program Management and Technical Engineering Support Services personnel. Managing project development requires regular communication and coordination with the assigned project manager and other project team members. At times, INDOT's Technical Engineering Support Services provides a work product to the consultant for them to complete their work. Evaluations of the consultant delivered work product are provided as project milestones are completed.

It is my understanding that VS Engineering will screen Mark from having any involvement in any of the company's current contracts with INDOT's Crawfordsville District. However, VS Engineering may intend to assign Mark to work on other current INDOT contracts in the other five (5) INDOT Districts.

4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

It is in the public's interest and beneficial to the state and other public agencies having Mark's extensive engineering experience (he has been a licensed Professional Civil Engineer for 25 years) available to provide professional engineering performance and guidance for state and local public works projects. Additionally, Mark's position with his prospective employer would apply his substantial INDOT experience to provide a better product to the state and public agencies. It is also in the public's interest to continue to receive a return on the investment made in Mark's professional development during his more than a decade working at INDOT.

5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

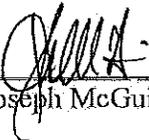
As a registered Civil Engineer and a member of the INDOT supervisory staff, many outside employment opportunities for Mark would have to undergo ethics scrutiny and some would be prohibited. Failure to approve this opportunity, which I believe had no connection with his past involvement in INDOT-VS Engineering contracts or relationships, would severely limit Mark's opportunities outside INDOT.

Further, Mark is nearing retirement and failure to approve this opportunity will materially and adversely impact his family's standard of living throughout his retirement years.

C. Signatures

1. Appointing authority/state officer of agency

By signing below I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation.



Joseph McGuinness, Commissioner

4/4/2017

DATE

2. Ethics Officer of agency

By signing below I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).



Mark J. Tidd, Ethics Officer

4/4/17

DATE

D. Approval by State Ethics Commission

FOR OFFICE USE ONLY
Approved by State Ethics Commission



James Clevenger, Chair, State Ethics Commission

4/13/17

Date